IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

W.P. No 1220 (S/S) of 2006

Date of decision :- 19-9-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 19-9-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Writ Petition No.1220 (S/S) of 2006

Ramesh Kumar
S/o Shri Sambhu Dayal
R/o 30/4 I.R.I. Colony, Civil Lines Roorkee
District Haridwar .....Petitioner

Versus

1. State of Uttaranchal through its
   Secretary Irrigation Department
   Secretariat Dehradun
2. Chief Engineer & Head of the Dept.
   Karmik Anubhag
   Irrigation Dept., Uttaranchal, Dehradun
3. Chief Engineer, Design & Director Irrigation
   Research Institute Roorkee
   District Haridwar .....Respondents

Dated :-19th September, 2006

Mr. Lok Pal Singh learned counsel for the petitioner.
Mr. Parvesh Tripathi learned Standing Counsel.

Hon'ble J. C. S. Rawat, J.

1. By means of this writ petition under section 226 of the Constitution of India, the petitioner has sought the following prayers:-

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned transfer order dated 30.06.2005 passed by the respondent no.2, contained Annexure No.1 to this Writ Petition.

(ii) Issue a writ, order or direction in the nature of mandamus commanding/ directing the respondents to decide the representation of petitioner in light of recommendations made by the respondent no.3 contained Annexure Nos.2 & 4 to this writ petition.

(iii) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) Award the costs of the writ petition in favour of the petitioner.

2. The petitioner's case is that he is working on the post of Senior Assistant in the Design Division, Irrigation Department, Roorkee, District Haridwar. He has been assigned the work of Senior Assistant and Drawing Disbursing Office in the Department regarding the treasury matters. Vide order dated 30.06.2005 the petitioner has been transferred from the said division to the Administrative Division, Roorkee. Later on, the petitioner was orally directed by the Chief Engineer, Design & Director Irrigation Research Institute, Roorkee not to relieve from the post of Senior Assistant and thus the petitioner is continuously working on the present place. On 11.08.2006 the Executive Engineer, Design Division sent a recommendation to the authorities for cancellation of the transfer of the petitioner. The Executive Engineer had also mentioned in the recommendation letter that the services of the petitioner are required in the said Division as he has sufficient experience on the said post. But, the transfer order was not cancelled by the authorities. However, the petitioner was not relieved from the said post. The transfer order was challenged on the ground that Mr. Shiv Kumar Shukla, Secretary of Ministerial Staff Association, Irrigation Department has an enmity with the petitioner because the petitioner has not supported him in the election of the Union. The Secretary of the Ministerial Association had been pressurizing the respondents to relieve the petitioner from the said Division. It was

further pleaded in the petition that the transfer order had been made on the ground of malice and pressure of the Ministerial Staff Association. It has been further pleaded that the superior officers of the petitioner has recommended his case that the work of the department would be affected adversely and there is no other competent person in the said Division to handle the work of Senior Assistant and matter relating to the treasury. In such a situation, the superior officer had asked the authority to cancel the said transfer order. When the transfer order was not cancelled the petitioner has preferred this writ petition before this Court.

3. I have heard Sri Lok Pal Singh learned counsel for the petitioner and Sri Parvesh Tripathi learned Standing Counsel for the respondent Nos. 1 to 3.

4. It was contended that Mr. Shiv Kumar Shukla, Secretary of the Ministerial Staff Association, Irrigation Department had an enmity with the petitioner because the petitioner had not supported him in the union's election. Shiv Kumar Shukla, Secretary of the Ministerial Staff Association had been pressurizing the respondents to transfer the petitioner from the Design Division. The petitioner has filed a letter dated 14.07.2006 addressed to respondent no.2 in which the union has threatened the authorities that if the petitioner is not transferred they would go on strike. It was further contended that the respondents are under pressure of the union and thus they are transferring him from the present place of posting. Learned Standing Counsel refuted the contention and contended that the aforesaid letter clearly shows that it had been written on 14.07.2006 whereas the transfer order of the petitioner was passed in the year 2005. The petitioner has not

produced any record which shows that the transfer order was passed due to pressure of the union. Perusal of the record reveals that the petitioner has pleaded the malice against the respondent to transfer him from the Design Division to the Administrative Section in the Roorkee. It is pertinent to mention here that the transfer order was passed on 30.06.2005 and the said letter of the Secretary had been written after one year to the respondents. It cannot be said that the said letter was sent prior to the passing of the transfer order. The petitioner had averred that the petitioner has not supported Shiv Kumar Shukla, Secretary in the in the union's election. The petitioner had not alleged the date of election in his petition. it is not evident that when the transfer was made Shiv Kumar Shukla was the Secretary of the Union or not. The transfer order was passed on 30.06.2005 and the said letter does not connect with the transfer order. It was pointed out by the learned counsel for the petitioner that the petitioner was not relieved in pursuance of the said transfer order, but now they are relieving the petitioner under the threat of the union. It is evident from the letter that the union has written a letter to the authorities to transfer the petitioner from Roorkee to any other station and the petitioner had been transferred from Design Division, Roorkee to the Administrative Division, Roorkee. The petitioner will remain at Roorkee in the same department. The grievance of the union still exists after relieving the petitioner. It is well settled position of law that the vague allegations of malice are not sufficient for seeking relief. The details and particulars should be pleaded in the pleadings and it should be proved by way of an affidavit. The malice in common acceptation means the spite or ill-will and the same is a question of

fact. The expression “mala fide” is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. It depends upon its own facts and circumstances. There must be factual support pertaining to the allegations of mala fides. Mere use of the word “mala fide/malice” by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion. Applying the aforesaid principal, I am of the view that the petitioner has pleaded malice in the petition, but it has no connection with the transfer order. As such, there is no force in the contention advanced on behalf of the petitioner.

5. It is also well settled position of law that the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions the court cannot interfere with it. While ordering the transfer, there is no doubt, the

authority must keep in mind the guidelines issued by the Government on the subject. Similarly is a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines with regard to the transfer of the employees does not confer upon the government employees a legally enforceable right.

6. In the case of **Shilpi Bose Vs. State of Bihar AIR 1991 SC 532**, the lady teachers of primary schools were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the teachers, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. The Hon'ble Supreme Court has allowed the appeal and set aside the judgment of the High Court by observing as follows:-

> *"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."*

7. In the case of **Union of India Vs. S.L. Abbas (1993) 4 SCC 357**, the respondent-Abbas was working

at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3.4.1986. The Tribunal allowed the petition and quashed the transfer order. When the matter came before the Hon'ble Supreme Court, the Hon'ble Supreme Court set aside the order of the Tribunal and observed as under:

> *7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."*

8). In view of the foregoing discussion, I do not find any reason to interfere with the impugned order. I am of the view that the petition is devoid of merit and is liable to be dismissed.

9). The petition is dismissed accordingly. No order as to costs.

(J.C.S.Rawat, J.)

Dated 19.09.2006
LSR